

## CRIMINAL MOTION.

*Before Mr. Justice Wilson and Mr. Justice Rampini.*

IN THE MATTER OF THE PETITION OF PARBUTTY CHARAN AICH.

PARBUTTY CHARAN AICH v. QUEEN-EMPRESS.\*

1888  
August 6.

*Criminal Procedure Code, ss. 134, 144—Penal Code, s. 188—Disobeying order of Public Servant—Trader at Hât—Order prohibiting holding of Hât.*

A District Magistrate, by an order made under s. 144 of the Criminal Procedure Code, after stating that it appeared that one "G O S has recently established a hât at S in the vicinity of K, an old-established hât, and held it on the same days, and that in consequence of the establishment of the new hât, and the endeavours made to induce or force people to frequent the new hât instead of the old one, a serious breach of the peace or riots are imminent," ordered "that the said G O S and all other persons abstain from holding such hât" on those days. The order was duly made and promulgated, but not strictly in accordance with s. 134 of the Code, and the orders of Government made thereunder. Notwithstanding the order one P O A was found exposing goods for sale as a trader at the hât on one of the prohibited days, and he was thereupon charged with disobeying the order of the Magistrate, and convicted of an offence under s. 188 of the Penal Code. *Held*, that the conviction was bad, as P O A did not come within the description of the persons intended by the order to be prohibited from "holding" the hât, which referred to "holding" as owner or manager, not as a trader.

*Held*, also, that the terms of s. 134 of the Code, and the notification made by Government thereunder as to promulgation and issue of an order, are directory, but an omission to follow strictly such direction, though it is an irregularity, does not invalidate the order: where therefore it is shown that the order has been brought to the actual knowledge of the person sought to be affected by it, such omission does not prevent the case coming within s. 188 of the Penal Code.

THE appellant Parbutty Charan Aich was charged with having disobeyed an order made by the Magistrate of Backergunge, and with having in consequence been guilty of an offence under s. 188 of the Penal Code.

It appeared that one Gobinda Chunder Sahu had established a hât in a village called Singhrakati in the District of Backergunge. The Magistrate of the district, finding that such a hât

\* Criminal Motion No. 238 of 1888, against the order passed by J. Posford, Esq., Judge of Backergunge, dated 21st June 1888, modifying the order passed by F. A. Hossein, Deputy Magistrate of Patuakhally, dated the 12th May 1888.

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interfered with the previously established hât in the neighbouring village of Krishnagunge, and that a breach of the peace was thereby imminent, issued the following order: "Whereas it appears from the report of Sub-Inspector Prosonno Coomar Mookerjee, and from the affidavit of Baikanto Chunder Gangooly filed herewith, that Gobinda Chunder Sahu has recently established a new hât at Singhrakati in the vicinity of Krishnagunge hât, an old established hât, and held it on the same days, viz., Tuesdays and Saturdays, and that in consequence of the establishment of the new hât, and the endeavours made to induce or force people to frequent the new hât instead of the old one, a serious breach of the peace or riots are imminent, it is hereby ordered that the said Gobinda Chunder Sahu and all other persons abstain from holding such hât, or any hât whatever, near or within the hât at Krishnagunge on any Tuesday or Saturday. This order is made under s. 144 of the Criminal Procedure Code and will remain in force two months."

The order was not served personally on Parbutty Charan Aich, nor was it duly promulgated in the hât by beat of drum, or as provided for by s. 134 of the Code and by Government notification made under that section. Notwithstanding this order the hât at Singhrakati still continued to be held, and on Saturday, 21st January, Parbutty Charan Aich, being found exposing goods for sale in the hât, was charged under s. 188 of the Penal Code with disobeying the above order, and on conviction was sentenced by the Deputy Magistrate to rigorous imprisonment for three months—a sentence which was altered on appeal to the Sessions Judge to seven days' imprisonment and a fine of Rs. 30. The Judge said: "As to Parbutty Charan Aich I see no reason to doubt the propriety of the conviction; but I do not find any satisfactory proof of his being more than a trader who comes to the hât and offers goods for sale there. He does not appear to be one of the hât proprietors or managers, though he is said to have been a *tadbirkar*." Parbutty Charan Aich appealed to the High Court on the grounds that the order of the Magistrate prohibiting the hât was not promulgated in the manner provided by law; that the order being therefore bad, the disobedience of such an order was not punishable under s. 188 of the Penal Code; and that

the act imputed to him did not constitute a disobedience of the order.

Baboo *Umbica Churn Bose* and, Baboo *Baikanto Nath Doss* for the appellant.

The *Officiating Deputy Legal Remembrancer* (Mr. Beeby) for the Crown.

The judgment of the Court (WILSON and RAMPINI, JJ.) was as follows :—

WILSON, J.—The conviction in this case is under s. 188 of the Indian Penal Code, which says that whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, disobeys such direction, shall be liable to certain punishment. Now, the order which the accused in the present case was charged with disobeying was an order by the District Magistrate under s. 144 of the Code of Criminal Procedure. It was an order made with relation to a *hât*. It appears that there was an old-established *hât*, and that certain persons, acting for, or with, one Gobinda Charan Sahu opened a new *hât* in the vicinity of the old one, and held it on the same days. This action, in the opinion of the Magistrate, made a serious breach of the peace imminent; and therefore having made the necessary inquiries he passed this order. [After reading the order (1) His Lordship continued]:

It has been found that notwithstanding that order the new *hât* was nevertheless held on Tuesdays and Saturdays; and the present accused has been convicted of disobeying that order. The fact found is that he sold goods in the *hât*, not that he was a proprietor of the *hât*, or was one of those who promoted or managed or had any control of it, but simply that as a trader he sold goods at the *hât*.

Two points have been raised before us. The first is, whether there was any such service or promulgation of the Magistrate's order as to bring the case within s. 188. With regard to that it would appear that the mode of service was not in accordance with the Criminal Procedure Code, because s. 144

(1) *Ante*, p. 10.

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says that, a Magistrate may, by a written order stating the material facts of the case and served in manner provided by s. 134, direct any person to abstain from a certain act, and so forth. And what s. 134 says is, that "the order," that is an order under s. 133, "shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons. If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person." In the present case, there was evidence probably that there was personal service on Gobinda Chunder Sahu. But there was no personal service on the present accused; nor was the service or promulgation in accordance with s. 134. The Bengal Government has gazetted an order to the effect that, when personal service cannot be made, the order shall be notified by beat of drum at the place in question. That was not done in the present case. Therefore the notice was not served according to the directions of the Criminal Procedure Code as amplified by the order in the Gazette. But I do not think that *that* is fatal in the present case, because I do not think that it is necessary for us to read the direction as to the mode of service as going absolutely to the validity of the order. I think we may fairly say that the terms of s. 134 and the notification in the Gazette are directory; and ought to be followed, and that it is an irregularity when they are not; but it does not follow that the order is a nullity in consequence, and I think that when the order has been duly made and promulgated, although not strictly in accordance with the terms of the law, and has been brought to the actual knowledge of the person sought to be affected by it, that is sufficient to bring the case under s. 188 of the Indian Penal Code. The first objection therefore seems to me to fail.

The other objection is more serious, and goes much more to the solid merits of the case. It is this, that what the present accused is found to have done is no breach of the Magistrate's order. It is obvious that before you can proceed criminally

against a man for breach of an order you must show that the order clearly and unequivocally prohibits the thing which he is said to have done. If the order be ambiguous and open to two interpretations, you must adopt the one most favourable to the accused, and not the other. In the present case the earlier part of the Magistrate's order shows, we think, pretty clearly what he was thinking of when he came to the conclusion that the new hât should be prohibited. He was thinking of the action of Gobinda Chunder Sahu, and of the people who were acting for or with him, that is to say, he was thinking of the conduct of persons who established the hât, opened it, managed it and tried to bring people to it to buy and sell; and having described their action as likely to induce a serious breach of the peace, he proceeds to prohibit Gobinda Chunder Sahu and all other persons from *holding* the hât. In that connection it is almost impossible to read the words "holding the hât" in any other sense than that which we have described, that is, in the sense of holding as owner or manager. It is almost impossible to read the words as including the conduct of people who do not hold the hât as owners and managers, but who frequent it as buyers or sellers. But if we are wrong in this interpretation of the words, at any rate it is clear that the order, looking at it in the most favourable light for the prosecution, is ambiguous, and does not clearly and unmistakably prohibit traders from buying and selling in the hât.

That being so, the conviction cannot stand, and must be set aside.

J. V. W.

*Conviction set aside.*

## APPELLATE CIVIL.

*Before Mr. Justice Wilson and Mr. Justice Rampini.*

JOYNARAYAN SINGH (JUDGMENT-DEBTOR) v. MUDHOO SUDUN SINGH (ADJUDICATING-CREDITOR).<sup>o</sup>

1888  
August 10.

*Jurisdiction—Deputy Commissioner—District Court—Insolvent Judgment-debtors—Civil Procedure Code, 1882, ss. 344, 360—Application to be declared insolvent.*

The Court of the Judicial Commissioner, and not that of a Deputy Commissioner, is the "District Court" in Chota Nagpur under ss. 2 and 344 of the Civil

<sup>o</sup> Appeal from Order No. 187 of 1888, against the order of E. N. Baker, Esq., Deputy Commissioner of Manbhoom, dated the 28th of April 1888.

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